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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
STAFFORD HANSELL COMPANY)
AND BRIERE'S BULLDOZING COMPANY,)
Appellants,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 78-223

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of four
separate \$250 civil penalties for alleged violations of Section 9.04
and Section 9.11(a) of respondent's Regulation I, came before the
Pollution Control Hearings Board, Dave J. Mooney, Chairman and Chris
Smith at a formal hearing in Tacoma on December 1, 1978. David Akana
presided.

Appellant Stafford Hansell Company was represented by Brien
Stafford, an owner, and Briere's Bulldozing Company was represented
by Jim Briere; respondent was represented by its attorney, Keith D.

1 McGoffin. Reporter Susan Cookman recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined. From
3 testimony heard and exhibits examined, the Pollution Control Hearings
4 Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
8 a certified copy of its Regulation I containing respondent's regulations
9 and amendments thereto of which official notice is taken.

10 II

11 On August 1, 1978, the appellant, Briere's Bulldozing Company,
12 ignited an outdoor fire at a building site near Renton, Washington.
13 Appellant Stafford Hansell Company had contracted with Briere's
14 Bulldozing Company to clear the land and to dispose of the
15 debris so that new homes could be constructed on the site. Appellant
16 Stafford Hansell Company owned the land upon which the homes were to be
17 constructed and upon which five separate piles of tree limbs and
18 brush were ignited.

19 III

20 On August 1, 1978, at approximately 1:30 p.m. a citizen complaint
21 concerning flyash and fallout from a landclearing fire was telephoned
22 to the respondent. Respondent's inspector visited neighbors adjacent
23 to the development site at approximately 1:30 p.m. on August 2, 1978,
24 observed the fires described above and received written complaints from
25 three residents of the area surrounding the development site. Respondent's
inspector observed flyash descending upon the complainants' yards and

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1 property from the fires. Formal notices of violation were
2 subsequently served upon the appellants for violation of Section 9.04
3 (R-14), Section 9.11(a) (R-15), and for violation of both Sections 9.04
4 and 9.11(a) (R-17). Respondent's inspector returned to the site at
5 approximately 2:00 p.m. on August 3, 1978 and observed the fires still
6 in progress at the landclearing site. He observed flyash on a fourth
7 complainant's yard and property, and received a written complaint. For
8 such occurrence a notice of violation of Section 9.04 (R-20) was served
9 upon the appellants. Notices and Orders of Civil Penalty Nos. 3953,
10 3952, 3951 and 3954 for \$250 each were later received by the appellants.

11 IV

12 Complainants were required to wash automobiles, lawn furniture,
toys and shrubs in order to remove the flyash which had settled upon
14 them. Complainants also suffered some small discomfort from the smoke.

15 V

16 The appellant Briere's Bulldozing Company had previously been
17 issued a Notice of Violation (R-2) for violation of Section 9.11(a) of
18 respondent's Regulation I. No civil penalty was assessed in that case.

19 VI

20 Appellant Briere had applied for and received a population density
21 verification from the respondent prior to igniting the instant
22 fires. Appellants had attempted to locate the fires as far as possible
23 from the existing homes. Appellant Briere was unaware that flyash
24 was landing upon the adjoining properties. Once the respondent's
25 inspector informed appellant Briere of the problem the fires were
✓ allowed to settle down until the wind direction changed.

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VII

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

Section 9.11(a) of Regulation I provides that:

It shall be unlawful for any person to cause or permit the emission of an air contaminant or water vapor, including an air contaminant whose emission is not otherwise prohibited by this Regulation, if the air contaminant or water vapor causes detriment to the health, safety or welfare of any person, or causes damage to property or business.

. . . .

"Air contaminant" is "dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof." Section 1.07(b); RCW 70.94.030(1). "Emission" is the "release into the outdoor atmosphere of air contaminants." Section 1.07(j); RCW 70.94.030(8). Air pollution is defined as:

. . . presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property. Section 1.07(c). RCW 70.94.030(2).

Section 9.11(a) thus makes "air pollution" unlawful. Therefore, when smoke or particulate matter is present in the outdoor atmosphere in sufficient quantities and of such characteristics and duration as is,

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1 or is likely to be, injurious to human health, plant or animal life,
2 or property, or which unreasonably interferes with enjoyment of life
3 and property, Section 9.11(a) is violated. We have not been persuaded
4 that the events which transpired amounted to a violation of that standard
5 as was alleged. Accordingly, Civil Penalty No. 3952 should be vacated
6 and violations as to Section 9.11(a) in Civil Penalty Nos. 3953 and
7 3951 should be stricken.

8 II

9 Section 9.04 of respondent's Regulation I states:

10 It shall be unlawful for any person to cause
11 or allow the discharge of particulate matter
12 which becomes deposited upon the real property
of others,

The section contains certain exceptions which were not shown to
14 be pertinent to this appeal. By discharging flyash onto the lots of
15 the complainants, the appellants violated Section 9.04 of respondent's
16 Regulation I as alleged.

17 III

18 Appellants violated Section 9.04 of respondent's Regulation I and
19 the three civil penalties assessed therefor should be affirmed. However,
20 appellants had tried to locate the fires so as to minimize the effects
21 upon adjoining properties, had applied for and received the proper approval
22 from the respondent, and were cooperative in attempting to remedy the
23 situation as soon as it was brought to their attention. Under the
24 circumstances, the assessed penalties for violations of Section 9.04
25 should be reduced from a total of \$750 to a total of \$250.

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27 AND ORDER

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this
ORDER


1. Civil Penalty No. 3952 is vacated.

2. Civil Penalties Nos. 3951, 3953 and 3954 assessing a total of \$750 is reduced to \$250, \$100 of which is suspended on condition that appellants not violate respondent's regulation for a period of one year from this date.

DATED this 16th day of January, 1979.

POLLUTION CONTROL HEARINGS BOARD


DAVE J. MOONEY, Chairman


CHRIS SMITH, Member


DAVID AKANA, Member

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